

Appl. No. 10/724,839
Docket No. P-147
Amdt. dated December 8, 2009
Reply to Office Action mailed on September 11, 2009
Customer No. 27752

REMARKS

Claims 32–34, 40, 42, 47, 53 and 55 are pending in the application.

With this Response, independent claim 32 has been amended. Support for this amendment can be found throughout the application and specifically on page 5 of the application as filed.

Claims 33, 40, and 53 have been cancelled without prejudice.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112, Second Paragraph

Claims 32-34, 40, 42, 47, 53, and 55 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Office Action states that neither the claims nor the specification clearly and distinctly define what a companion animal is. Applicants respectfully traverse. However, in order to advance prosecution, and without conceding to the basis of the rejection, Applicants have amended independent claim 32 to recite “dogs and cats” as the class of companion animals. Additionally, the dependent claims have been amended to correct any overlap. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection Under 35 U.S.C. § 103 Over Heisey

Claims 32-34, 40, 42, 47, 53, and 55 have been rejected under 35 U.S.C. § 103 as being unpatentable over Heisey et al. (US Publication No. 2002/0132780). Applicants respectfully traverse this rejection. However, in an effort to advance prosecution, and without conceding to the basis and/or merit of the rejection, independent claim 32 has been amended. Independent claim 32 now recites, *inter alia*, wherein the companion animal composition is a nutritionally balanced kibble. Thus, for the reasons that follow, Applicants respectfully request reconsideration and withdrawal of the rejection.

Heisey discloses compositions useful for those mammals experiencing painful or debilitating joint, bone, or inflammatory conditions. See para. 35. Such compositions

Appl. No. 10/724,839

Docket No. P-147

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Customer No. 27752

can be directed for use in domestic dogs and domestic cats. See para. 36. Importantly, Heisey fails to disclose, teach, or suggest a nutritionally balanced kibble. Even more, Heisey specifically teaches compositions that are low in carbohydrate content. See para. 45. The amounts of carbohydrate that Heisey discloses amount to at most 19 grams of carbohydrates per every 230 milliliters of the composition, which, as best understood by Applicants, amounts to about 8% carbohydrate (19/230). Additionally, Heisey is silent regarding fat and/or protein.

Nutritionally balanced compositions, such as kibbles, are well known in the art and as described on page 5 of the present application are compositions that have known required nutrients to sustain life in proper amounts and proportion based on recommendations of recognized authorities in the field of companion animal nutrition. Additionally, in Examples 1a and 1b of the present application, Applicants disclose a nutritionally balanced kibble. That kibble contains approximately 44% and 47% protein, 8% and 6% fat, and 39% and 37% carbohydrate. The claims, as now amended, recite wherein the companion animal composition is a nutritionally balanced kibble. Respectfully, Applicants submit that an 8% amount of carbohydrate and the lack of disclosure of fat and/or protein cannot said to obviate the claims of the present application. In sum, Heisey fails to disclose the requisite composition of what one of ordinary skill in the art would consider to be a nutritionally balanced kibble for a dog or cat.

Applicants also submit that Heisey actually teaches away by disclosing an upper limit on the carbohydrate content of the composition. Consistent with a proper 103 analysis, the invention as whole must be considered. Applicants submit that Heisey's much lower carbohydrate content and the specific teaching to have low carbohydrate contents teaches away from the claims of the present application that now recite wherein the companion animal composition is a nutritionally balanced kibble.

Lastly, it is important to recognize the compositions that Heisey refers to for its composition. Heisey discloses that the compositions can be utilized as a food composition. In para. 100, Heisey discloses that food compositions can include chews, candies, gum, and other confectionary products, bars, as well as baked goods, and

Appl. No. 10/724,839

Docket No. P-147

Amdt. dated December 8, 2009

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Customer No. 27752

spreads. Thus, Heisey again fails to specifically state a kibble and a nutritionally balanced kibble. Again, Heisey fails to disclose the requisite composition of what one of ordinary skill in the art would consider to be a nutritionally balanced kibble for a dog or cat. Thus, for this additional reason, Applicants submit that the rejection is improper.

In sum, Heisey fails to disclose, teach, or suggest all of the elements of independent claim 32 and also teaches away from the present claims as described above. Since the dependent claims necessary include the limitations of independent claim 32, the reasons above particularly apply to those claims as well. Thus, Applicants respectfully submit that the rejection should be withdrawn in view of the newly amended claims since all of the elements of independent claim 32 have not been disclosed, taught, or suggested by Heisey, and Heisey teaches away from the present claims. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection Under 35 U.S.C. § 103 Over Anantharaman in view of Kaplan

Claims 32-34, 40, 42, 47, 53, and 55 have been rejected under 35 U.S.C. § 103 as being unpatentable over Anantharaman et al. (US Patent No. 5,952,033) in view of Kaplan et al. Applicants respectfully traverse this rejection because a prima facie case of obviousness has not been made.

The Office Action has combined the teaching of Anantharaman with that of Kaplan. Applicants respectfully traverse such a combination. Anantharaman discloses a gelatinized cereal product that includes at least about 0.04% kestose, 0.04% nystose, and 0.04% fructosyl-nystose. Kaplan discloses a commercial FOS mixture containing three FOS species, GF2 (32.0%), GF3 (53.6%), and GF4 (9.8%). Page 2682, right column, second paragraph. Thus, looking to the amounts of the FOS disclosed by Anantharaman, it discloses equal, corresponding amounts of the FOS composition components, namely 0.04% of each component. However, Kaplan discloses an approximate ratio of 3:5:1 of the components GF2:GF3:GF4. More particularly, Kaplan discloses a ratio of GF2: GF3 of 3:5, a ratio of GF3:GF4 of 5:1, and a ratio of GF2:GF4 of 3:1. That is, each ratio is substantially different than being equal, as disclosed in Anantharaman. Specifically, five times more GF3 than GF4, three times more GF2 than GF4, and 1 2/3 more GF3 than

Appl. No. 10/724,839

Docket No. P-147

Amdt. dated December 8, 2009

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Customer No. 27752

GF3, while Anantharaman discloses equal amounts of GF3 and GF4 and GF5. Such disclosure of clearly different and substantially different ratios of FOS compositions in Anantharaman and Kaplan forms a clear lack of suggestion to combine the references and a clear teaching away of the relative amounts of the FOS components to use.

Moreover, Applicants submit that the references teach away from each other. Anantharaman teaches a FOS composition with similar amounts of FOS components for the effect of decreasing fecal volume, while Kaplan teaches substantially differing amounts of FOS components for the effect of supporting growth of Probiotics. Thus, these amounts are not only substantially different from each other, but the benefits are different. Consequently, Applicants submit that an improper combination of references has been made. Thus, Applicants submit that the conclusion of obviousness is incorrect and that a prima facie case of obviousness has not been made. Reconsideration is respectfully requested.

Moreover, as best understood by Applicants, both Anantharaman and Kaplan are completely silent regarding the methods of enhancing as recited in the present claims. Anantharaman discloses a method of decreasing fecal volume of a pet. See column 3, lines 12-17. Kaplan discloses that FOS mixtures can support the growth of various Probiotics. See Kaplan generally. However, neither Anantharaman nor Kaplan disclose whatsoever a method of enhancing calcium absorption, improving bone health, improving strength, and improving physical activity performance. Consequently, Anantharaman and Kaplan, alone and even when combined, fail to disclose each and every element of the present claims. Consistent with a proper 103 analysis, all of the limitations of a claim must be considered, which has not been done here. Consequently, for this additional reason, Applicants submit that the combination of Anantharaman and Kaplan fail to obviate the present claims since a prima facie case of obviousness has not been made.

Applicants respectfully request reconsideration and withdrawal of the rejection.

Appl. No. 10/724,839
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CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,
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